PHILIP ALLEN
DESERT WILDERNESS COALITION

IBLA 81-1068, IBLA 81-1071 Decided December 5, 1983

Appeals from decisions of the New Mexico State Office, Bureau of Land Management, denying protests of the designation of four units as Wilderness study areas and the elimination of all or portions of seven units from further consideration as wilderness study areas. NM-020-007, NM-020-008, NM-020-009, NM-020-010, NM-020-016, NM-020-037, NM-020-051, NM-030-025, NM-030-031, NM-030-034, and NM-030-042.

Dismissed in part; reversed and remanded in part; set aside and remanded in part; affirmed in part.

1. Federal Land Policy and Management Act of 1976: Wilderness--Wilderness Act

   Where there is no evidence that a route has been improved by mechanical means, it will not be considered a road even where it is subject to relatively regular and continuous use and maintenance is unnecessary.

2. Federal Land Policy and Management Act of 1976: Wilderness--Wilderness Act

   BLM may not properly eliminate an inventory unit from further consideration as a WSA because of the adverse impact on naturalness due to unauthorized construction of post-FLPMA roads, even where BLM concludes that the roads cannot be rehabilitated to a substantially unnoticeable condition.

3. Federal Land Policy and Management Act of 1976: Wilderness--Wilderness Act

   BLM may properly eliminate an area of less than 5,000 acres from further consideration as a WSA under section 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976).

4. Federal Land Policy and Management Act of 1976: Wilderness--Wilderness Act

A BLM decision to eliminate an area from further consideration as a WSA will be set aside and the case remanded to BLM where, on appeal, the appellant raises substantial questions concerning the adequacy of BLM's consideration of whether the area has the requisite naturalness and the record does not adequately support BLM's conclusion on that criterion.

APPEARANCES: Philip Allen, pro se; James T. Smith, Chairman, Desert Wilderness Coalition, for Desert Wilderness Coalition; Dale D. Goble, Esq., and Barbara Berschler, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

These appeals are taken from decisions of the New Mexico State Office, Bureau of Land Management (BLM), denying protests of the designation of four units as wilderness study areas (WSA's) and the elimination of all or portions of seven units from further consideration as WSA's. 1/ Appellants' protests had been directed at the final intensive inventory decision of the BLM State Office, which designated WSA's. See 45 FR 75590 (Nov. 14, 1980).

The November 1980 BLM State Office decision was made pursuant to section 603(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782(a) (1976). That section directs the Secretary to review those roadless areas of 5,000 acres or more and roadless islands of the public lands which are identified during the inventory required by section 201(a) of FLPMA, 43 U.S.C. § 1711(a) (1976), as having wilderness characteristics described in the Wilderness Act of September 3, 1964, 16 U.S.C. § 1131 (1976). From time to time thereafter, the Secretary shall report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness. Congress will make

1/ The Desert Wilderness Coalition (DWC), (IBLA 81-1068), has appealed from a BLM decision dated Mar. 16, 1981, denying its Dec. 10, 1980, protest with respect to the following units:

NM-020-007 (Rimrock)	NM-020-037 (Presilla)
NM-020-008 (Sand Canyon)	NM-030-025 (Redrock)
NM-020-009 (Little Rimrock)	NM-030-031 (Cooke Range)
NM-020-010 (Pinyon)	NM-030-034 (Florida Mountains)
NM-020-016 (Sierra Ladrones)	NM-030-042 (Cedar Mountains)

Philip Allen (IBLA 81-1071), has appealed from a BLM decision dated Feb. 2, 1981, denying his Dec. 14, 1980, protest with respect to the following units:

NM-020-007	NM-020-037
NM-020-008	NM-020-051 (Padilla)
NM-020-009	NM-030-025
NM-020-010	NM-030-034

The units under appeal are situated in the Socorro and Las Cruces BLM districts, New Mexico.

the final decision with respect to designating wilderness areas, after a recommendation by the President. 43 U.S.C. § 1782(b) (1976).

The wilderness review undertaken by the BLM State Office pursuant to section 603(a) of FLPMA, supra, has been divided into three phases by BLM: Inventory, study, and reporting. The November 1980 BLM State Office decision marks the end of the inventory phase of the review process and the beginning of the study phase.

The key wilderness characteristics assessed during the inventory phase of the review process are size, naturalness, an outstanding opportunity for either solitude or a primitive and unconfined type of recreation. Wilderness Inventory Handbook (WIH), dated September 27, 1978, at 6.

Four of the units involved in these appeals, NM-020-007 (Rimrock), NM-020-008 (Sand Canyon), NM-020-009 (Little Rimrock), and NM-020-010 (Pinyon), were previously before the Board in Santa Fe Pacific Railroad Co., 64 IBLA 27 (1982). In that case, the Board in part set aside the November 1980 BLM State Office decision designating these units as WSA's and remanded the records to BLM with instructions to eliminate from the units all lands encumbered by the appellants' vested rights in the mineral estate, and to redetermine whether the remaining lands should be designated as WSA's. Subsequently, the Assistant Secretary concluded that the remaining lands could not be designated as WSA's. See 47 FR 58372 (Dec. 30, 1982). Consequently, the appeals are dismissed as to these units. See Arizona State Association of 4 Wheel Drive Clubs, 65 IBLA 126, 133 (1982).

We will thus proceed to consider appellants' arguments with respect to the remaining seven units. For the sake of clarity, we will consider each of the units separately.

Sierra Ladrones (NM-020-016)

In its November 1980 decision, BLM designated 38,922 acres out of a total of 47,400 acres in the unit as a WSA and eliminated 8,478 acres from further consideration as a WSA. DWC challenges BLM's decision to delete 6,000 acres in the southern portion of the unit from further consideration as a WSA. The rationale for deleting these 6,000 acres is stated in BLM's Intensive Wilderness Inventory Report (Inventory Report), dated March 1980, at page 4.

> The remaining 6,000 acres are separated from the rest of the unit by a vehicle way located in the arroyo bottom of the Rio Salado. It is believed that effecting a vehicle closure on this portion of the inventory unit, should the area be designated a wilderness, would be impractical. Further, the arroyo bottom of the Rio Salado has been used historically for vehicle access to the community of Riley and the Ligon Ranch. In addition, if the boundary is not placed on the Rio Salado, the Sierra Ladrones unit would be contiguous to a portion of the Cibola National Forest.

In response to DWC's protest, BLM again examined the area and stated:

> This area was excluded from the WSA because we have considered the Rio Salado as a road. It receives relatively regular and continuous use and has historically provided access to the community of Riley and Ligon Ranch. Since it is a sandy arroyo bottom, maintenance by machine or hand tools would be illogical and unnecessary. The road definition in the BLM Wilderness Inventory Handbook can not be clearly applied to some situations. Applying the road definition in this case was not easy. In our best judgment, after careful consideration of public input and visits to the site, we feel the spirit and intent of the road definition was met in this case. [Emphasis added.]

In its statement of reasons for appeal, DWC contends that the "Rio Salado" should not be considered a road because there is no evidence that it receives relatively regular and continuous use. DWC argues that it is irrelevant that it is unnecessary to maintain the route by machine or hand tools. DWC further states that the fact that the route receives infrequent use is due to the presence of a number of well-maintained roads in the area which "provide access to the community of Riley, the Ligon Ranch, and other points of interest." Finally, appellant argues that the impracticality of closing the "Rio Salado" to vehicle access is a management consideration which is properly addressed during the study phase of the wilderness review process.

[1] The crucial question is whether the "Rio Salado" can be considered a road. Section 603(a) of FLPMA, supra, directs the Secretary to review only roadless areas of 5,000 acres or more. Accordingly, before a unit may proceed to study, BLM must draw the boundary of the unit to exclude roads. Jacqueline L. McGarva, 60 IBLA 278 (1981). BLM has adopted the definition of "road" suggested by the legislative history of FLPMA at H.R. Rep. No. 1163, 94th Cong., 2d Sess. 17 (1976), wherein it is stated: "The word 'roadless' refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road."

The definition of "road" provides that the route must have been "improved and maintained by mechanical means." Id. (emphasis added). This definition has been interpreted by BLM in Organic Act Directive (OAD), 78-61, Change 2 (June 28, 1979), at 4, to include the situation where the route "has been improved to insure relatively regular and continuous use but has not yet required maintenance." Thus, even though it has been unnecessary to maintain a route by mechanical means, as BLM asserts in the present case, a route may nevertheless be considered a "road." However, such a route must at least have been improved by mechanical means. It is not sufficient that a route is subject to relatively regular and continuous use. In OAD 78-61, Change 2, at 4, BLM states that: "Improvements and relatively regular and continuous use would be an indication that the road would be maintained if

the need were to arise." 2/ (Emphasis added.) In the present case, BLM does not state that the "Rio Salado" was ever improved by mechanical means. Accordingly, consistent with the legislative history of FLPMA, we conclude that BLM has not established that the "Rio Salado" is a road.

In support of its decision to use the "Rio Salado" as a boundary for the WSA, BLM also relied on its assertion that the route provides vehicle access and that "effecting a vehicle closure on this portion of the inventory unit, should the area be designated a wilderness, would be impractical" (Inventory Report at 4, (emphasis added)). We agree with DWC that the extent to which wilderness designation would affect vehicle access through this portion of the unit is properly considered during the study phase of the wilderness review process, when competing uses of the land are compared. As we said in James Stewart Co., 71 IBLA 100, 102 (1983), in which the appellant had expressed similar concern for vehicle access: "The inventory phase is designed solely to identify those areas of the public lands having the wilderness characteristics defined by Congress. Upon a finding that such characteristics exist, such lands are properly included in a WSA and are studied for 'suitability' for designation as wilderness." BLM apparently agrees with this analysis as it stated that the question of access relates to whether an area should be designated "a wilderness," rather than a WSA (Inventory Report at 4). The record in this case is clear that the route in question is maintained solely by the passage of vehicles. Under the wilderness definition of a road, the Rio Salado is not a road.

Therefore, we conclude that BLM improperly deleted 6,000 acres from the WSA. We reverse the BLM decision denying DWC's protest and remand for inclusion of that land in the Sierra Ladrones WSA.

Presilla (NM-020-037)

This unit, totaling 9,600 acres, was eliminated from further consideration as a WSA because it lacks naturalness. BLM relied on the existence of 5 miles of mining "roads" constructed after the enactment of FLPMA, between September 1978 and June 1979. In its WSA Decision Criteria, BLM stated that "[a]fter extensive inspection of the impacts in the unit, it was determined that the roads could not be rehabilitated due to kinds of soil and arid conditions." As an alternative to WSA designation, BLM proposed that 1,280 acres of the Presilla unit be designated an area of critical environmental concern (ACEC), and that a portion of the ACEC, totaling 320 acres, be withdrawn from mineral entry.

2/ OAD 78-61, Change 2, at 4, further states:
"Does a route meet the road definition if it (a) has not required improvement and maintenance to date, (b) but is used on a relatively regular and continuous basis, and (c) would probably be improved and maintained in the future if that were required to insure relatively regular and continuous use? The answer is no, it does not meet the handbook definition, nor is it consistent with the legislative history. A way which was established solely by the passage of vehicles is not a road." (Emphasis in original.)

In their protests, appellants contended that BLM improperly considered the adverse impact of the five post-FLPMA mining roads and that, in any case, the roads can be rehabilitated. In its decisions denying the protests, BLM reiterated that it had determined that it was not feasible to rehabilitate the roads "to a substantially unnoticeable condition" (Decision, dated March 16, 1981, at 2).

In their statements of reasons for appeal, appellants reiterate the arguments made in their protests. In addition, DWC states that there is no evidence of a study by BLM of the rehabilitation potential of the mining roads and that BLM has "an agreement" with the company that built the roads (Rocky Mountain Energy Company) "that rehabilitation will be done."

At the outset, it should be noted that while BLM refers to the vehicle routes as "roads," for purposes of determining the roadlessness of the unit, they are classified as "ways" (Intensive Wilderness Inventory Report, March 1980, at 3). However, BLM eliminated the unit because the 5 miles of mining "roads" adversely affect the naturalness of the area. An area is considered natural where it "generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable" (16 U.S.C. § 1131(c) (1976)).

[2] In California Association of Four-Wheel Drive Clubs, Inc., 60 IBLA 240 (1981), we concluded that a post-FLPMA road would not preclude designation of a unit as a WSA where the record did not support a finding that the Secretary had failed in his obligation under section 603(c) of FLPMA, 43 U.S.C. § 1782(c) (1976), to manage potential WSA's "in a manner so as not to impair the suitability of such areas for preservation as wilderness." We recognized that under certain nonimpairment criteria outlined in the "Interim Management Policy and Guidelines Under Wilderness Review" (IMP), dated December 12, 1979, 44 FR 72013 (Dec. 12, 1979), temporary access routes could be constructed within potential WSA's. However, the IMP states, as one of the nonimpairment criteria, that:

> Any temporary impacts caused by the activity must, at a minimum, be capable of being reclaimed to a condition of being substantially unnoticeable in the wilderness study area (or inventory unit) as a whole by the time the Secretary of the Interior is scheduled to send his recommendations on that area to the President, and the operator will be required to reclaim the impacts to that standard by the date. [Emphasis added.]

44 FR 72018 (Dec. 12, 1979).

In the present case, BLM initially concluded that the "roads could not be rehabilitated" (WSA Decision Criteria). However, the question is not whether such roads may be rehabilitated per se, but, rather, whether they may be rehabilitated to a substantially unnoticeable condition. BLM considered the latter question in connection with responding to appellants' protests. However, as the Solicitor admits in its Answer, dated December 31, 1981, at page 4, the 5 miles of mining roads were the result of "unauthorized

construction." 3/ The IMP states, at page 16, that: "If unauthorized activities result in surface disturbance or other degradation of the area's suitability for preservation as wilderness, legal action will be initiated as appropriate to obtain full restoration of the area. Impacts resulting from unauthorized activities will not disqualify an area from WSA status." (Emphasis added.) Accordingly, we reverse the BLM decision denying appellants' protests and remand for designation of the Presilla unit as a WSA.

Redrock (NM-030-025)

This unit, totaling 14,460 acres, was eliminated from further consideration as a WSA. In so doing, BLM deleted a 4,000-acre area in the northern portion of the unit, known as the Gila Middle Box. This area is divided from the remainder of the unit by private land. BLM deleted this area because it "does not meet the size criterion" (WSA Decision Rationale). Appellants protested only the deletion of the 4,000-acre Gila Middle Box area.

In responding to appellants' protests, BLM stated that the area did not meet the size criterion for areas of less than 5,000 acres, i.e., "[s]ubject to strong public support * * * and * * * clearly and obviously of sufficient size as to make practicable its preservation and use in an unimpaired condition and of a size suitable for wilderness management," identified in the WIH, at page 12. In their protests and appeals, appellants contend that the area exceeds 5,000 acres when considered in conjunction with the contiguous 24,350 acres in the Middle Gila Box RARE II area of the Forest Service, U.S. Department of Agriculture. That area was subsequently dropped from further wilderness consideration.

[3] The WIH, at page 12, identifies three situations in which an area of less than 5,000 acres could satisfy the wilderness characteristics of size. 4/ However, in Tri-County Cattlemen's Association, 60 IBLA 305, 314

3/ The record contains an Aug. 9, 1979, memorandum from the District Manager, Socorro District, BLM, to the State Director, BLM which states: "The potential trespass by Rocky Mountain Energy Company has been nullified. It seems that the Company was never notified of FLPMA Section 603 restrictions in contacts with BLM, but the Company has agreed to cooperate with BLM in reclaiming surface damage to the extent feasibly possible." This memorandum indicates that initial construction of the roads was not authorized.

4/ The WIH specifically states, at page 12, that:

"Roadless areas of less that 5,000 acres of contiguous public lands where any one of the following apply:

"1) They are contiguous with lands managed by another agency which have been formally determined to have wilderness or potential wilderness values, or

"2) The public has indicated strong support for study of a particular area of less than 5,000 acres and it is demonstrated that it is clearly and obviously of sufficient size as to make practicable its preservation and use in an unimpaired condition, and of a size suitable for wilderness management, or

"3) They are contiguous with an area of less than 5,000 acres of other Federal lands administered by an agency with authority to study and preserve wilderness lands, and the combined total is 5,000 acres or more."

(1981), we concluded that an area of less than 5,000 acres of public land cannot qualify as a WSA under section 603(a) of FLPMA, supra. That section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands. The fact that an area adjoins a RARE II area does not alter this limitation. Tri-County Cattlemen's Association, supra. Section 603(a) of FLPMA, supra, requires review of public lands. For purposes of its use in FLPMA, the term "public lands" is defined as "any land and interest in land owned by the United States within the several states and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership." (Emphasis added.) 43 U.S.C. § 1702(e) (1976); see Don Coops, 61 IBLA 300, 306 (1982). Accordingly, we conclude that BLM properly denied appellants' protests and hereby affirm the BLM decision.

Cooke Range (NM-030-031)

BLM designated 19,870 acres out of a total of 20,510 acres in the unit as a WSA and eliminated 640 acres from further consideration as a WSA, under the intensive inventory. In its protest, DWC contends that three adjacent areas to the north, south, and east of the WSA, including one area which was not subject to the intensive inventory, should be included to expand the WSA to about 30,000 acres. With respect to the northern area, BLM stated in its WSA Decision Rationale at 1:

> The decision rested largely with the application of the road definition to two routes in the northern part of the unit; the route through Hurricane Pass and the northern part of the route in Hadley Draw which terminates at a windmill in the W 1/2, Sec. 13, T. 20 S., R. 9 W. Both routes were originally improved and according to the permittee "have been maintained in the past and will be in the future". Based on the obvious signs of original construction of both the route to the windmill in Sec. 13 and the route through Hurricane Pass and the confirmation provided by the permittee as to his use and maintenance of the routes, the two routes are judged to be roads and form the northern boundary of the WSA.
>
> New information acquired after release of the WSA proposals also pertains to the location of the northern boundary of the WSA. A patented mining claim in W 1/2 Sec. 13, T. 20 S., R. 9 W., was overlooked in both the initial and intensive inventories. Even if one does not consider the route through Hurricane Pass a "road", the northern portion of the unit is still cut off from the WSA by the road to the windmill in Sec. 13, the patented mining claim in Sec. 13, and the road providing access to mines in the northeast portion of Sec. 14, T. 20 S., R. 9 W.

With respect to the eastern area, BLM deleted this area pursuant to a "boundary adjustment" because it was connected to the remainder of the unit by a "narrow finger of public land one quarter of a mile in width or less" (Wilderness Inventory at 5).

With respect to the southern area, BLM stated in its WSA Decision Rationale, at 2:

> Comments were also received questioning the application of the road definition to the Butterfield Trail route which forms the southeastern boundary of the unit and requesting further consideration for the area to the SE containing Massacre Peak. The route in question was judged by the BLM to be a road in the initial inventory. No comments questioning this judgment were received in the public review period for initial inventory. Therefore, the portion of the unit SE of the Butterfield Trail and containing Massacre Peak was dropped from further wilderness consideration on July 9, 1979 and will not be reconsidered.

In its protest, DWC contended that the northern area should be included in the WSA because "the road to the windmill in section 13 * * * is a way" (Protest at 3). DWC stated that the route had been visited and determined to be "impassable." Id. DWC also stated that BLM should reconsider inclusion of the southern area in the WSA. DWC made no arguments with respect to the eastern area. In responding to appellant's protest, BLM reiterated its conclusion that the routes separating the northern and southern areas from the WSA are roads.

In its statement of reasons for appeal, DWC contends that the routes through Hurricane Pass and to the windmill in sec. 13, separating the northern area from the WSA, are not roads because they have not been maintained to insure relatively regular and continuous use. DWC argues that BLM should not consider "recent blading" undertaken on the Hurricane Pass route (Letter to the Acting State Director, BLM, dated July 16, 1980, at 2). DWC also contends that the Butterfield Trail route, separating the southern area from the WSA, is similarly not a road.

The record indicates that the southern area was deleted from the Cooke Range unit during the initial inventory. Effective July 9, 1979, the BLM State Office issued its final initial inventory decision designating those lands that would be further considered during the intensive inventory (44 FR 39622 (July 6, 1979)). As the time for filing an appeal from that decision has passed, appellant may not invoke the Board's jurisdiction to consider the propriety of deletion of the southern area from the Cooke Range unit. Sierra Club, Utah Chapter, 62 IBLA 263, 265 (1982). This portion of the appeal is dismissed.

With respect to the northern area, it is separated from the remainder of the unit by "roads." The definition of a road appears above in connection with the Sierra Ladrones unit. BLM concluded that the routes through Hurricane Pass and to the windmill in sec. 13 had been improved by mechanical means and would be maintained in the future as needed to insure relatively regular and continuous use. This is consistent with the definition of a road. See OAD 78-61, Change 2, at 4. Moreover, the fact that the road to Hurricane Pass has been recently bladed is not inconsistent with consideration of the unit for WSA designation where the route predates FLPMA and that blading is in accordance with the nonimpairment criteria. Furthermore, recent blading

indicates that the route is, in fact, maintained by mechanical means when necessary. DWC has provided no documentation disputing designation of the two routes as roads, other than photographs of the Hurricane Pass route. We conclude that BLM properly deleted the northern area from the Cooke Range WSA.

With respect to the eastern area, it was separated from the remainder of the unit by a narrow finger of public land. In accordance with OAD 78-61, Change 3 (July 12, 1979), at 3, boundary adjustments may be made on the basis of the outstanding opportunity criterion in certain limited circumstances. These circumstances relate to the configuration of a unit, namely:

> (a) When a narrow finger of roadless land extends outside the bulk of the unit;
> (b) When land without wilderness characteristics penetrates the unit in such a manner as to create narrow fingers of the unit (e.g., cherrystem roads closely paralleling each other);
> (c) When extensive inholdings occur and create a very congested and narrow boundary area.

OAD 78-61, Change 3 at 3. The record supports the boundary adjustment made with respect to the eastern area of the Cooke Range unit. The land connecting the eastern area to the remainder of the unit was properly characterized as a narrow finger of public land and, thus, the subject of a boundary adjustment. Utah Wilderness Association, 72 IBLA 125, 187-88 (1983). The result is to separate the eastern area from the rest of the unit.

Therefore, we conclude that BLM properly denied appellant's protest and hereby affirm the BLM decision.

Padilla (NM-020-051)

This unit, totaling 24,800 acres was eliminated from further consideration as a WSA because it lacks outstanding opportunities for solitude or a primitive and unconfined type of recreation.

In its final intensive inventory decision, BLM described the Padilla unit as follows: "Padilla is dominated by high Chihuahuan desert vegetation. Elevations range from 4,600 to 5,700 feet. Topography varies from nearly flat desert mesas bounded by arroyos of considerable size to large well-developed sand dunes, hills, canyons, and mountain terrain." BLM concluded that the unit lacks outstanding opportunities for solitude or primitive, unconfined recreation because: "The majority of Padilla consists of relatively flat desert land cut by occasional steep arroyos. The area fails to provide adequate topographic or vegetative screening for human visitors. In addition, Padilla lacks any outstanding physical features." Id.

Allen protested and now appeals elimination of the Padilla unit. He asserts, in his statement of reasons for appeal at 5, that this action was "not justified by field evidence or BLM criteria." Further, he argues that the Padilla unit is "larger, is more varied in land forms, and provides greater topographic relief" than the nearby Veranito unit (NM-020-035) which was designated a WSA. Appellant notes that the Veranito unit, comprised of

7,150 acres was described in BLM's final intensive inventory decision as follows: "[P]rimarily flat to rolling upper Chihuahuan desert cut by shallow arroyos. A series of rugged hills is located on the east. The dominant vegetative type is creosote bush. Elevations range from 4,600 to 5,400 feet."

At the outset, we note that we do not consider appellant's argument as constituting an improper comparison "among units," in violation of OAD 78-61, Change 3, at 2. The OAD is directed at the situation where units are ranked according to a "rating system or scale" with respect to the outstanding opportunity criterion, such that superior units are judged qualified and inferior ones rejected regardless of individual merit. Id. We do not believe that the OAD was directed at the situation where a unit is judged to be equivalent to a unit already designated a WSA. This is the thrust of appellant's argument. Appellant is concerned because two units whose intensive inventory discussions are similar were accorded disparate treatment by BLM i.e., one was designated a WSA and one was not.

Nevertheless, while the Padilla and Veranito units appear on paper to be similar, 5/ the question of the presence of outstanding opportunities must be judged in the field and is necessarily subjective in nature. Such a judgment is entitled to considerable deference. Utah Wilderness Association, supra. Appellant has not established that BLM failed to follow its guidelines or that its conclusions were not supported by the record. Therefore, we conclude that BLM properly denied appellant's protest and hereby affirm the BLM decision.

Florida Mountains (NM-030-034)

This unit, totaling 75,310 acres, was eliminated from further consideration as a WSA because it lacks naturalness. During the intensive inventory, BLM divided the unit into 17 subunits which were separated from each other by roads and a powerline. BLM only inventoried the four subunits that were larger than 5,000 acres. Three contiguous subunits (NM-030-034B) were grouped together, running north-south in the eastern portion of the unit. The fourth subunit (NM-030-034A) was situated adjacent to the west of that group. On April 7, 1980, BLM proposed designation of the 18,904 acres in subunit NM-030-034A as a WSA. In its Wilderness Intensive Inventory at 3, BLM noted in that subunit several imprints of man, including an access road to the Barite of America mine, several ways and mining activity, which were considered to be "substantially unnoticeable." On April 7, 1980, BLM proposed elimination of subunits NM-030-034B from further consideration as WSA's. BLM concluded in its Wilderness Intensive Inventory at 4, that while the imprints of man were "substantially unnoticeable," the subunits lack outstanding opportunities for either solitude or a primitive and unconfined type of recreation.

5/ The Solicitor points out that the Padilla unit differs from the Veranito unit due to "higher concentrations of human intrusions * * * which significantly detract from its solitude opportunities" (Solicitor's Answer, at 7). Appellant has not refuted this.

In its November 1980 decision, BLM eliminated the entire Florida Mountains unit from further consideration as a WSA, based on the following analysis:

> A reevaluation of the Florida's wilderness characteristics, based on public comments, additional field checks, and all inventory information indicates that the wilderness quality of the unit is negated by mining activity and grazing improvements. There are twenty-one known unpatented mining claims within the boundaries of the originally proposed WSA. Numerous prospect pits, tunnels, shafts, and mine dumps are associated with these claims. Range improvements within the originally proposed WSA or along its boundaries include windmills, troughs, pipelines, developed springs, corrals, fences, and dirt tanks. Additionally, the configuration of the area is very irregular due to a combination of corridored roads and land status.
>
> The BLM now feels that due to the cumulative effects of the impacts described above, the unit does not appear natural. Therefore, the unit is dropped from further wilderness consideration.

Wilderness Decision Rationale at 2-3.

In his protest, Allen argued that the "effects of earlier mining activity * * * are not great and because of the ruggedness of the topography are not readily apparent" (Protest at 2). In responding to appellant's protest, BLM reiterated statements made in its Wilderness Decision Rationale. On appeal, appellant contends that BLM has not documented the reason for its change in position, that mining activity is either historical in nature or located on the periphery of the unit and that BLM cannot consider the irregular configuration of the unit.

In its protest, DWC argued that past mining activity is "not substantially noticeable in the context of the rugged mountain surroundings" (Protest at 2). DWC also contended that BLM had presented no new information to support dropping the entire unit and disputed BLM's findings with respect to roads. In an attached map, DWC indicated that subunit NM-030-034A, areas 1 and 2 of subunits NM-030-034B and certain additional land should be designated a WSA. In responding to DWC's protest, BLM reiterated statements made in its Wilderness Decision Rationale. On appeal, DWC requests that a portion of the Florida Mountains unit, totaling 36,000 acres, be designated a WSA. The requested land is the same as depicted in the map attached to DWC's protest. DWC contends that BLM has not documented the imprints of man upon which it relies and that, in any case, the impact of such imprints is lessened by the rugged terrain of the unit. With respect to mining claims, DWC states that there is no current mining and that mining activity by Barite of America constituted a "post-FLPMA trespass." DWC also argues that BLM should have considered minor boundary adjustments to exclude certain "intrusions," e.g., a windmill located in the SE 1/4 sec. 24, T. 26 S., R. 8 W., New Mexico principal meridian, New Mexico. DWC also states that "[m]any of the vehicle routes which were identified in the Intensive Inventory Report as roads are actually ways."

Contrary to appellants' contention, the imprints of man which BLM relied upon in its final intensive inventory decision are well documented on a 1964 Geological Survey map included in the record. Moreover, appellants have not presented sufficient evidence to dispute the division of the Florida Mountains unit into 17 subunits due to the presence of roads and a powerline. Utah Wilderness Association, supra. With the exception of the four subunits identified above, these subunits are then properly deleted because they are individually less than 5,000 acres in size. Tri-County Cattlemen's Association, supra. Appellants have also presented no evidence disputing the conclusion that the three subunits grouped as subunit NM-030-034B do not satisfy the outstanding opportunity criterion. We will, therefore, focus on subunit NM-030-034A.

[4] In eliminating subunit NM-030-034A, BLM relied on the "cumulative effects" of mining activity and grazing improvements. Wilderness Decision Rationale at 3. We will first consider the individual impact of the identified imprints of man. BLM states that there are 21 unpatented mining claims in subunit NM-030-034A. This fact in and of itself does not preclude a finding of naturalness. Rather, it is the extent to which mining activity is substantially noticeable that is important. Appellants essentially disagree with BLM's conclusion that the identified mining activity is substantially noticeable. This is not sufficient to establish error. However, with regard to range improvements, BLM identified in the WIH at 13, certain imprints of man which would not jeopardize a finding of naturalness, including fencing and spring development. See ASARCO, Inc., 64 IBLA 50 (1982). These examples of permissible intrusions expand on a list set forth in H.R. Rep. No. 95-540, 94th Cong., 2d Sess. 6 (1977), which was prepared to accompany a House bill later enacted as the Endangered American Wilderness Act, 16 U.S.C. § 1132 (Supp. II 1978). Accordingly, we conclude that developed springs and fences may not be considered in determining naturalness. Moreover, OAD 78-61, Change 2, at 5, provides that "similar imprints of man in an inventory unit should not result in a conclusion that the area lacks naturalness." We conclude that "similar imprints" would include the other range improvements listed by BLM.

OAD 78-61, Change 2, at 5, provides further guidance on assessing the imprints of man, especially their cumulative effect:

> When major imprints of man, which are substantially noticeable, are located within a roadless area, consideration must be given to adjusting the unit boundary to exclude that imprint of man. Major imprints of man which are substantially noticeable should not be carried forward as part of an inventory unit receiving further wilderness review. Minor imprints of man must be evaluated as to whether individually they are substantially unnoticeable in the overall unit. Such minor imprints must also be evaluated as to their cumulative effect on an overall unit, both in connection with major imprints or by themselves.
>
> Boundary adjustments are not appropriate for individual, minor imprints which are determined to be substantially unnoticeable. Careful judgment must be used in deciding if

> close groupings of minor imprints and how much intervening land are appropriate for exclusion from a unit. Obviously, when boundary adjustments are made as discussed above, a decision must be made on whether the remaining portion of the unit is still of sufficient size to qualify for further consideration.
>
> When a boundary adjustment is made due to imprints of man, the boundary should be relocated on the physical edge of the imprint of man. When this is not possible, the boundary should be a legal description. In this case, the boundary must eliminate the imprint of man and as little adjacent land as possible. The adjusted boundary must not be drawn on a "zone of influence" around the imprint for these reasons: (1) consistency between inventory teams in locating this "zone of influence" would be difficult to achieve; (2) it would involve implementation of the "sights and sounds" doctrine; and (3) future impacts would in effect be able to encroach on a unit creating a new "zone of influence."
>
> When multiple imprints of man are considered to be substantially noticeable and the decision has been made to eliminate a group of those intrusions from the unit, caution must be used in relocating the boundary. Natural portions of the unit which are located between the individual imprints of man must not be automatically excluded. This would depend on the proximity of the individual imprints; their overall cumulative impacts, the kind of impact and severity.

It is apparent from the record that many of the imprints of man in subunit NM-030-034A are located near the periphery of that unit. There is no evidence that BLM considered the elimination of these imprints through boundary adjustments located "on the physical edge of the imprint." Id. Moreover, while BLM may rely on the cumulative effect of close groupings of imprints, the map indicates that there is a considerable distance between individual imprints and small groupings of imprints. We cannot conclude that BLM considered eliminating through boundary adjustments only those areas physically affected by the imprints. Rather, BLM apparently eliminated the entire area as a "zone of influence." Id.; see Utah Wilderness Association, supra at 152-53. BLM also relied on the "irregular" configuration of the unit in eliminating subunit NM-030-034A from further consideration as a WSA. "Configuration" is listed as a factor in OAD 78-61, Change 3 at 4, to be considered in determining whether outstanding opportunities for solitude are present in a unit. See Utah Wilderness Association, supra at 131. Moreover, we have approved, as consistent with Congressional intent, the practice of cherrystemming, i.e., boundary adjustments which eliminate roads or impermissible imprints of man, resulting in nonwilderness corridors in a unit. The inevitable result is irregularly shaped units. However, in C & K Petroleum Co., 59 IBLA 301, 307 (1981) we stated that: "Our holding [approving the practice of cherrystemming] * * * was guided by the fact that section 603(a) does not specify any particular shape for an area which may eventually be recommended by the Secretary and the President for inclusion in the National Wilderness Preservation System." (Emphasis added.) We, therefore, conclude that where there is sufficient doubt as to the adequacy of BLM's assessment of the naturalness of subunit NM-030-034A and the record does not support

BLM's conclusion, the BLM decision denying DWC's protest must be set aside and the case remanded to BLM for reconsideration of the naturalness of that subunit. BLM's denial of DWC's protest as to the remainder of the Florida Mountains unit is affirmed.

Cedar Mountain (NM-030-042)

This unit, totaling 205,216 acres, was eliminated from further consideration as a WSA with the exception of a 16,680-acre area in the central portion of the unit. During the intensive inventory, BLM identified numerous roads which dissected the unit into various areas, most of which were less than 5,000 acres. However, BLM identified four areas greater than 5,000 acres and described their wilderness characteristics as follows:

> The roadless area in the extreme western part of the unit is approximately 22,240 acres in size. Most of this roadless area consists of sparsely vegetated open desert plains with rougher terrain including Cedar Mountain to the north. Land status and cherry-stemmed roads result in an extremely irregular shaped configuration, especially in the northern part of the area. There are three windmills and five dirt stock tanks in the area. The area is marginally natural. Opportunities for solitude or primitive and unconfined recreation are not outstanding.
>
> The northern part of unit 030-042 contains a 15,200 acre roadless area. The area consists of rolling creosote covered terrain cut by north-east trending drainages. The area is apparently natural with few imprints of man. Opportunities for solitude or primitive recreation are not outstanding.
>
> The third roadless area is located in the central part of the unit. This area contains 6,480 acres of public land and consists of rolling terrain predominantly vegetated with creosote. The area contains numerous erosion control dikes. Due to the number and location of the dikes, they are substantially noticeable and negatively impact the overall naturalness of this roadless area.
>
> The fourth roadless area is in the central and south-central part of the Cedar Mountains inventory unit. This roadless area is bound on the south by Highway 9 and on the north, east, and west by ranch roads. It contains the core of the Cedar Mountain range including portions of Hat Top Mountain, Old Baldy, and Flying W Mountain, along with drainages and flats to the northeast and south. This roadless area contains 28,240 acres of public land. The southern part of this area is impacted by range improvements and does not appear natural. Two cherry-stemmed roads run parallel north-northeast into the southern part of the area from Highway nine. Buried pipeline with associated water bars, and numerous erosion control dikes are located along these roads. Several dirt tanks and windmills are also located in the

> southern part of the area. However, an area of 16,680 acres in the mountainous portion of the roadless area appears natural and offers outstanding opportunities for solitude.

Wilderness Decision Rationale at 1-2.

In its protest, DWC contended that the WSA should be enlarged to include additional land to the west and south, as depicted on an attached map. DWC argued that "[m]any" of the vehicle routes identified by BLM are not roads, including the route separating the western portion of the unit from the WSA (Protest at 3). DWC also argued that the few imprints of man in its proposed WSA are "substantially unnoticeable." Id.

In responding to DWC's protest, BLM stated that the western portion of the unit is "separated from the WSA by the generally north-south road through sections 3, 10, 15 and 22, T. 27 S., R. 13 W., and section 34, T. 26 S., R. 13 W." (Decision at 3). BLM also stated that the southern boundary of the WSA was located "to exclude the cumulative impacts of * * * range improvements." Id.

On appeal, DWC contends that BLM should designate a 75,000-acre WSA, enlarging the present WSA. The requested land is substantially the same as depicted on the map attached to DWC's protest. DWC again argues that the route separating the western portion of the unit from the WSS is a way because examination of it indicates no "initial construction or maintenance," and that this area is natural. DWC also argues that the southern boundary of the proposed WSA is arbitrary and that the range improvements are located along the road corridors in the southern portion of the unit.

DWC has presented no evidence that the routes identified by BLM as dissecting the Cedar Mountains unit should not be considered roads. These subunits are then properly deleted because they are individually less than 5,000 acres in size. Tri-County Cattlemen's Association, supra. With respect to the areas greater than 5,000 acres, DWC has only focused on the western area and those portions of the central and south central area of the unit which are adjacent to the partially designated WSA.

With respect to the western area, appellant has presented no evidence to dispute BLM's finding of a road separating the area from the WSA, other than photographs of the route. Accordingly, we conclude that BLM properly separated this area from the WSA. With respect to whether this area can be independently supported as a WSA, DWC has presented no evidence to dispute BLM's conclusion that the area lacks outstanding opportunities for solitude or a primitive and unconfined type of recreation. We hereby affirm BLM's decision denying DWC's protest with respect to the western roadless area in the Cedar Mountain unit.

With respect to the southern portion of the area excluded from the WSA, BLM relied solely on the cumulative effect of range improvements. As we noted above in connection with the Florida Mountains unit, range improvements, including dirt tanks and windmills, will not preclude a finding of naturalness. This conclusion applies equally to buried pipelines with associated water bars and erosion control dikes. Accordingly, we set aside the BLM decision denying DWC's protest and remand to BLM to consider inclusion of the

southern portion of the "fourth roadless area" in the WSA (Wilderness Decision Rationale, at 1). The additional land warranting further consideration, is bounded on the south by the southern boundary of the unit, on the west by the road running northeast from sec. 7, T. 28 S., R. 13 W., to private land in the W 1/2 sec. 27, T. 27 S., R. 13 W., and on the east by the road running northeast from sec. 22, T. 28 S., R. 13 W., to the corner of the designated WSA in sec. 7, T. 28 S., R. 12 W. We affirm as to all other areas involved in the Cedar Mountain unit.

Therefore, pursuant to the authority delegated the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed in part and the decisions appealed from are reversed and remanded in part; set aside and remanded in part; and affirmed in part.

Gail M. Frazier
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Douglas E. Henriques
Administrative Judge